

ARTICLE XX. LEGAL STATUS PROVISIONS*

*Note --See the editor's note at Art. XIII.

Section 20.01. Conflict with other regulations.

Whenever the regulations of this ordinance require a greater width or size of yards, courts, or other open space, or require a lower height of buildings or lesser number of stories or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statutes, the regulations and requirements of this ordinance shall govern.

Whenever the provisions of any other statute require more restrictive standards than are required by this ordinance, the provisions of such statute shall govern.

Section 20.02. Statutory vested right provisions.

(1) *Background/authorization.*

- (a) The North Carolina General Assembly ratified Senate Bill 766 on July 20, 1990 as Chapter 996 of the 1989 Session Law (1990 Regular Session), effective October 1, 1991; and
- (b) Chapter 996 has been codified as, and shall hereafter be identified as, G.S. 160A-385.1; and
- (c) G.S. 160A-385.1 provides for the establishment of a statutory "vested right" upon approval of a "site specific development plan"; and
- (d) The City of Salisbury is authorized and required to identify the specific types of zoning or land use approvals that constitute a "site specific development plan" within the meaning of G.S. 160A-385.1.

(2) *Purpose.* The purpose of this section is to implement the provisions of G.S. 160a-385.1 pursuant to which a statutory vested right is established upon the approval of a site specific development plan.

(3) *Definitions.* As used in this section, the following terms have the meaning indicated:

- (a) *Approval authority.* The city council is hereby designated by ordinance as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.
- (b) *Site specific development plan.* A plan of land development submitted to the City of Salisbury for purposes of obtaining approval of a site development plan as may be approved by the city council under section **12.06**, Group development.

Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a special parcel or parcels or property shall constitute a site specific development plan.

- (c) *Zoning vested right.* A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(4) *Establishment of a zoning vested right.*

- (a) Zoning vested right shall be deemed established upon the valid approval by the city council of a site specific development plan, following notice and public hearing.
- (b) The appropriate approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- (c) Notwithstanding subsections (a) and (b) above, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained. Failure to secure a variance or have a variance duly approved by the zoning board of adjustment shall render the zoning vested right null and void.
- (d) A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- (e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City of Salisbury, including, but not limited, to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective in regard to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.
- (f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(5) Approval procedures and approval authority.

- (a) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
- (b) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form provided by the City of Salisbury that a zoning vested right is being sought.
- (c) Each map, site plan, or other document evidencing a site specific development plan shall contain the following notation:

"Approval of this plan establishes a zoning vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until _____(date)."
- (d) Following approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (e) Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval of the zoning ordinance.

(6) Duration.

- (a) A zoning right that has been vested as provided in this section shall remain vested for a period of two (2) years. This vesting shall not be extended by any amendments or modifications to a site specific development plan, unless expressly provided by the approval authority at the time the amendment or modification is approved.
- (b) Upon issuance of a building permit, the expiration provisions of G.S. 160A-418 and the revocation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

(7) *Termination.* A zoning right that has been vested as provided in this section shall terminate:

- (a) At the end of the applicable vesting period in regard to building(s) and use(s) for which no valid building permit applications have been filed;
 - (b) With the written consent of the affected landowner;
 - (c) Upon findings by the City of Salisbury, by ordinance after notice a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
 - (d) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the City of Salisbury, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
 - (e) Upon findings by the City of Salisbury, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
 - (f) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.
- (8) *Limitations.* Nothing in this section is intended or shall be deemed to create any vested right other than as established pursuant to G.S. 160A-385.1.

(Ord. No. 1993-47, § 1, 6-1-93; **Ord. No. 1996-35**)

Section 20.03. Reenactment and repeal of existing zoning ordinances.

This ordinance amends and in part carries forward by reenactment of some of the provisions of the zoning ordinance of the City of Salisbury (adopted by the city council on September 17, 1948, as amended, and on April 9, 1964, as amended) and it is not the intention to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have accrued hereunder are preserved and may be enforced. All provisions of the zoning ordinance of the City of Salisbury enacted in 1948, as amended, and 1964, as amended, which are not reenacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any zoning ordinance heretofore in effect, which are now pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance but shall be prosecuted to their finality the same as if this ordinance had not been adopted; any and all violations of existing zoning ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and

nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending, and/or which may heretofore have been instituted or prosecuted.

(Ord. No. 1993-47, § 1, 6-1-93)

Section 20.04. Validity.

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 1993-47, § 1, 6-1-93)

Section 20.05. Effective date.

This ordinance shall take effect and be in force from and after its adoption by the city council of the City of Salisbury, this twenty-second day of June, 1972.

(Ord. No. 1993-47, § 1, 6-1-93; **Ord. 2000.97**)